

WILLIAM F. BRANSCOME

IBLA 84-162

Decided June 6, 1984

Appeal from decision of Colorado State Office, Bureau of Land Management, denying petition for reinstatement of noncompetitive oil and gas lease C-29401.

Affirmed.

1. Oil and Gas Leases: Reinstatement -- Oil and Gas Leases:
Termination

The holder of a noncompetitive oil and gas lease terminated by operation of law for failure to pay the annual rental timely is not entitled to reinstatement of his lease pursuant to section 31(c) of the Mineral Leasing Act, as amended, 30 U.S.C. § 188(c) (1982), where the late payment was mailed to BLM after the lease anniversary date and the lessee presents no evidence in support of the assertion that the reason for the late payment was illness at or near the lease anniversary date.

APPEARANCES: William F. Branscome, pro se.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

William F. Branscome has appealed from a decision of the Colorado State Office, Bureau of Land Management (BLM), dated November 7, 1983, denying appellant's petition for reinstatement of noncompetitive oil and gas lease, C-29401.

Effective April 1, 1981, BLM issued a noncompetitive oil and gas lease for 359.33 acres of land situated in Morgan County, Colorado, pursuant to section 17 of the Mineral Leasing Act, as amended, 30 U.S.C. § 226 (1982). By notice of September 19, 1983, BLM informed appellant that lease C-29401 had terminated effective April 1, 1983, the anniversary date of the lease, for failure to pay annual rental in a timely manner. BLM also notified appellant that he could file a petition for reinstatement of the lease either pursuant to section 31(c) of the Mineral Leasing Act, as amended, 30 U.S.C. § 188(c) (1982), or section 401 of the Act of January 12, 1983, P.L. 97-451, 96 Stat. 2462 (1983) (codified at 30 U.S.C.A. § 188(d) (West Supp. 1983)). On September 29, 1983, appellant requested reinstatement of lease C-29401

pursuant to section 31(c) of the Mineral Leasing Act, as amended, supra, contending that "payment was delayed due to my being on vacation for the period immediately prior to the April 1, 1983, date and upon my return, the payment was made in a timely manner." The record indicates that appellant mailed a check in payment of the annual rental, dated April 1, 1983, postmarked on April 7, 1983, and that it was received by BLM on April 11, 1983. In its November 1983 decision, BLM denied appellant's petition for reinstatement because the failure to make the annual rental payment timely was neither justifiable nor not due to a lack of reasonable diligence.

In his statement of reasons for appeal, appellant states that his failure to pay timely was due to "absence from the country" and that he was delayed "from returning due to illness in the middle of March."

[1] Section 31(b) of the Mineral Leasing Act, as amended, 30 U.S.C. § 188(b) (1982), provides that upon failure of a lessee to pay rental on or before the anniversary date of the lease on which there is no well capable of production of oil or gas in paying quantities, the lease terminates automatically by operation of law. Under section 31(c) of the Mineral Leasing Act, as amended, supra, a terminated oil and gas lease may be reinstated where the rental is paid within 20 days and upon a showing by the lessee that the failure to pay on or before the anniversary date was either justifiable or not due to a lack of reasonable diligence. See also 43 CFR 3108.2-1(c) (1982). In the absence of such proof, a petition for reinstatement is properly denied. Anthony F. Hovey, 79 IBLA 148 (1984), and cases cited therein.

The regulation in effect at the time appellant's lease terminated, 43 CFR 3108.2-1(c)(2) (1982), provided that reasonable diligence "normally requires sending or delivering payments sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the payment." (Emphasis added.) It is well established that mailing a rental payment after the lease anniversary date, as in the present case, does not constitute reasonable diligence, under that regulatory standard. E.g., Anthony F. Hovey, supra. 43 CFR 3108.2-1 was amended effective August 22, 1983, to provide that:

A remittance which is postmarked by the U.S. Postal Service, common carrier or its equivalent (not including private postal meters) on or before the lease anniversary date and is received in the proper BLM office no later than 20 days after such anniversary date shall be considered as timely filed.

43 CFR 3108.2-1(a). The preamble to the final rule reinforces the conclusion evident from the language of the regulatory provision that a late payment received within 20 days of the lease anniversary date will be considered "timely filed," and, thus, not result in the termination of the lease. See 43 FR 33655 (July 22, 1983). We conclude, however, that this interpretation is contrary to section 31(b) of the Mineral Leasing Act, as amended, supra, which provides that a lease terminates by operation of law "upon failure of a lessee to pay rental on or before the anniversary date of the lease." See Anthony F. Hovey, supra at 151 n.1 (Grant, A.J. concurring). We believe that the proper approach is to treat a late payment mailed prior to the anniversary date but received within 20 days of the lease anniversary date as satisfying

the criterion of reasonable diligence. In any case, appellant's payment was not postmarked "on or before the lease anniversary date," in accordance with 43 CFR 3108.2-1(a), and, thus, appellant cannot have the benefit of the amended regulation. Accordingly, we conclude that appellant's failure to pay timely was due to a lack of reasonable diligence.

Late payment of an annual rental will be considered justifiable if the untimeliness was proximately caused by extenuating circumstances outside the lessee's control which occurred at or near the anniversary date of the lease. Anthony F. Hovey, *supra*. However, we have held on numerous occasions that travel, either for pleasure or business, does not ordinarily prevent a diligent individual from making payment or arranging for others to make payment in his absence, and, therefore, will not justify a late payment. James M. Chudnow, 62 IBLA 13 (1982), and cases cited therein. Appellant also asserts that illness serves to justify his late payment. In certain instances, we have held that illness justifies a late payment. Thus, in Joanne F. Bechtel, 76 IBLA 1, 3 (1983), we cited two cases:

[I]n Billy Wright, 29 IBLA 81 (1977), we held that the illness of the appellant's brother, who was suffering with terminal cancer and subsequently died, during August 1976 was a circumstance which justified the appellant's failure to pay the annual rental on the lease anniversary date, September 1, 1976. We noted that because the appellant was "distraught during this time * * * [he] was unable to give full attention to his business affairs." *Id.* at 82. Similarly, in C. H. Winters, [34 IBLA 350 (1978)] we held that the illness of a friend, whom the appellant visited on an out-of-town business trip, stayed with, and cared for until November 1, 1977, the lease anniversary date, was a circumstance which justified the late rental payment.

In both instances, the illness had so disrupted the lessee's normal routine that the party petitioning for reinstatement was unable to conduct his usual affairs. In the present case, appellant has not established that this occurred.

An appellant who wishes to establish that the untimely payment was caused by circumstances beyond his control must substantiate this allegation with sufficient proof such that this Board can conclude that the circumstances actually existed and were the proximate cause for the tardy payment. See 43 CFR 3108.2-1(c)(2). The statement of reasons filed by appellant merely stated that the reason for the late payment was "due to our inability to sign the check because of absence from the country. We were detained from returning due to illness in the middle of March." No further explanation was given and there is no indication that the illness so disrupted appellant's routine that he was unable to conduct his affairs at the time payment was due. There is no way we can tell the duration of this illness, its seriousness, or even its actual existence. This Board cannot accept such unsupported allegations, as to do so invites abuse of the reinstatement regulations.

Accordingly, we find that appellant has failed to demonstrate that his failure to make timely payment was justifiable and due to reasons beyond his control. BLM properly denied appellant's petition for reinstatement sought under the authority of 30 U.S.C. § 188(c) (1982).

Because the November 1983 BLM decision did not constitute an adjudication of appellant's rights, if any, to reinstatement under section 401 of the Act of January 12, 1983, supra, and because appellant chose not to seek reinstatement under this authority, we express no opinion on that subject.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

R. W. Mullen
Administrative Judge

We concur:

Wm. Philip Horton
Chief Administrative Judge

Franklin D. Arness
Administrative Judge

